DOCUMENT RESUME

ED 098 744 EC 070 465

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TITLE	Citizens and Handicaps.
PUB DATE	13 Nov 74
NOTE	10p.; Keynote Address at the National Easter Seal Society (San Antonio, Texas, November 1974)
EDRS PRICE	MF-$0.75 HC-$1.50 PLUS POSTAGE
DESCRIPTORS	*Citizenship; *Civil Rights; Equal Education; *Exceptional Child Services; Goal Orientation; *Government Role; *Handicapped Children; Social Services

ABSTRACT

In a speech delivered at the National Easter Seal Society's Annual Convention (1974), the author discusses progress toward full citizenship for the handicapped focusing on the roles of the Department of Health, Education, and Welfare (DHEW) and the Office for the Handicapped, Constitutional guarantees of equal rights for all citizens, and national goals for services to the handicapped in the 1970's. The Office for the Handicapped is seen to have five functions, the primary function being coordination of the various DHEW programs for the handicapped. The author considers the plight of persons in public institutions for the mentally retarded as a violation of the Eighth Amendment's guarantee against "cruel and unusual punishment," and he considers the exclusion of handicapped children from free public education as a violation of the Fourteenth Amendment. Identified are eight objectives leading to the goal of citizenship for all handicapped Americans, such as the enactment and implementation of comprehensive, inexpensive health care services for all. (LS)

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"CITIZENS AND HANDICAPS"

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A Keynote Address Delivered by the Honorable Stanley B. Thomas, Jr.

at the National Easter Seal Society's Annual Convention*

November 13, 1974

San Antonio, Texas

Highlights:

- Approximately 20 minutes in delivery
- Divides into seven sections:
  - Introduction
  - OHD-Serving America's Vulnerable Populations
  - The Goal is in Sight
  - Citizens and Handicaps
  - Setting National Priorities..and Frustrations
  - Goals for the Seventies
  - Summing Up

*Convention Theme is: "Mañana is Today (The Coal is in Sight)"

EC 060465

CITIZENS AND HANDICAPS

Introduction

At no other time in America's history are we Americans so conscious of the responsive character of the institutions which shape and direct our lives. Events of recent months have served to sharpen our recall of these basic precepts of democratic government and of the promise that democratic government holds for all free men and women.

I did not, however, solely accept your gracious speaking invitation to deliver a patriotic lecture in this historic city of San Antonio on citizenship. "Citizenship", nonetheless, is an appropriate concept to discuss today. What are the rights and privileges of citizenship? Who has it? Who doesn't?? And most important, what are we doing to extend these rights to America's vulnerable populations. "Mañana is Today". Your theme for this convention is well chosen.

OHD--Serving America's Vulnerable Populations

When I talk of "vulnerable" populations, I not only refer to individuals with physical or other handicaps; I am also referring to our nation's children, who are served by programs of the Office of Child Development, including Project Head Start. As you know, ten percent of the enrollment opportunities in Head Start are now available to handicapped children., I am also talking about older Americans served by programs of the OHD Administration of Aging, and America's youth, served by our Office of Youth Development. Native Americans, our "first Americans"--the American Indians and native Alaskans, are the special concerns of our Office of Native American Programs.

I am particularly pleased to introduce the newest member of the Office of Human Development to you--the Office for the Handicapped. This office, created by Secretary Weinberger on February 20 of this year, has a truly exciting mandate which is of vital importance in the years ahead to the coordinated development and delivery of services

to handicapped Americans. The Office for the Handicapped will perform five needed functions related to HEW's many and varied programs for the handicapped.

First-----It will prepare a long-range projection for the provision of comprehensive services;

Second---It will continually analyze the operation of HEW programs and, evaluate their effectiveness;

Third-----The office will also encourage coordination and cooperative planning among HEW programs;

Fourth----It will develop ways to promote the utilization of research findings and the adoption of exemplary practices; and,

Fifth-----The office will provide for a central clearinghouse for information and resources available to handicapped persons.

Let's look more closely at the challenge this new Office faces in light of the broader domestic role HEW plays today. The Department of Health, Education and Welfare administers more than 300 categorical programs authorized by Congress. The agency carries out its domestic mission through a range of partnerships--national, state, and local—involving both public and private agencies and organizations. About 90 cents of every HEW dollar goes back to the states, cities, universities, private research groups and to many other non-federal agencies. Much of this funding is "seed" money. State and local matching funds often equal or exceed the Federal share. To index departmental growth, I need only point out that the HEW budget has grown from $7 billion in Fiscal Year 1954—our first year of operation--to a proposed $111 billion budget for FY 1975. This is a 1600 percent increase!—far outstripping the rate of growth of the U. S. Gross National Product. HEW is now the highest funded cabinet-level department. This fact is not widely reported, but how the Federal pie is sliced obviously has a great deal to say about a functional shift in America <u>toward</u> domestic priorities. This $111 billion figure, by the way, is contained in the President's proposed budget for Fiscal

Year 1975. It represents over one third of the entire Federal Budget.

The HEW domestic mission is varied and complex. Part of this mission involves the delivery of health, educational and public assistance services to handicapped persons. However, the scope of agency concerns with handicapping conditions is reflected within more broadly conceived program areas such as maternal and child health, child development, mental health, public health, education and rehabilitation. To illustrate, preliminary research by the Office for the Handicapped has disclosed that at least 77 HEW program elements target upon the provision of services, training, research, income maintenance, and facilities construction for program development in the handicap field. These activities are administered by the Department's constituent agencies--the Public Health Service, Social Security Administration, Office of Education, Social and Rehabilitation Service, and the Office of Human Development. How do we bring together fragmented programs into a cohesive Departmental program for handicapped Americans?

The problem of cerebral palsy, for example, does not fall exclusively within the province of any one HEW operating agency. It is not exclusively a "health" problem or an "education" problem or a "welfare" problem. Aspects of each are involved: obstetrics, pediatrics, neurology, special education, public education, teacher training, rehabilitation services, residential and day care, public assistance, psychopharmacology, audiology, and the list goes on. Clearly, the Office for the Handicapped has a critical role to play in the coordination of present departmental commitments to crippled children and to children with other handicaps. Simply pointing out to consumers where to look for existing resources in HEW is an important coordinating role!

"The Goal is in Sight" (Which One?)

The second half of this conventions theme is also well chosen: "The Goal is in Sight". Your theme is well chosen, but I would say to you: Which goal? Are we not

really talking about the rights and privileges of citizenship? Can we really talk in terms of any other one goal which expresses both our compassion for our fellow man and our commitment to redress the abridgement of human rights? I believe we cannot.

Therefore, to me, the theme of this conference means that the civil rights of handicapped Americans must be pursued with deliberate speed.

Citizens and Handicaps

Western man traces the origins of the concept of "natural" equality to Greek philosophy. Assertions of natural equality caused modern man to become uneasy about the institution of slavery. Indeed, "Rights of Men" were fundamentally connected with the French and American revolutions and the U. S. Civil War. A dogmatic outcome of the American Revolution, as you know, was a constitution setting forth both expressed and implied rights of citizenship.

Our Constitution, then, is the cornerstone of American democracy. And if we are going to tell people that "Manana is Today" for the handicapped, we best base our logic upon this document. For example, consider the Eighth Amendment. This amendment provides that:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.
>
> "NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED"

Lets apply this doctrine, by example, to a poorly visible segment of American society.

Approximately 200,000 American citizens reside in public institutions for the mentally retarded. Seymour Sarason* has observed that U. S. residential services for the retarded have consistently housed large numbers of people in one place where staffing was provided by a variety of professional and custodial personnel. Mental retardation literature, in fact, is replete with contentions that many institutionalized persons do not receive "treatment", but rather they are incarcerated for no crime and warehoused to be hidden from public view and from public accountability.

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* A scholar of distinction in mental retardation at Yale University

Cruel and unusual punishment? The daily maintenance expenditures for large or exotic zoo animals often exceed institutional maintenance expenditures for human beings. Furthermore, the retarded resident must post as symbolic "bail" a satisfactory IQ score and adaptive behavior to qualify for most treatment or educational programs. Need I elaborate further to demonstrate the constitutional inequity present here? I think not. On February twenty-first of this year, the U. S. Department of Justice filed a law suit in a district court which seeks to affirm the constitutional right to proper and humane care for institutionalized residents of the Rosewood State School. This action represents the first time that the Federal Government has brought suit on its own in these matters, although it has joined with other plaintiffs in similar cases in three other states. The Justice Department cited the Eighth Amendment as a rationale for intervention.

Continuing this line of reason, on July twenty eighth, 1868, the ink was not yet dry on the Emancipation Proclamation, the states ratified the Fourteenth Constitutional Amendment. This Amendment defines "citizenship". I quote:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Although virtually all state constitutions provide education as a fundamental right guaranteed to the children of their state, many states have enacted statutory law enabling school authorities to exclude handicapped children from free public education. Here is a telling example: In 1919, the Wisconsin Supreme Court considered the case of an academically capable crippled child who produced, and I quote from the State position--"a depressing and nauseating effect on the teachers and school children".* The child drooled. The Court upheld the State's position, the child was excluded from the educational program. However, Attorney General La Follete reexamined this case in 1967 and determined this denial of educational opportunity to be an illegal practice.

*Beattie vs Board of Education,(172 N.W. 153, 169, Wisconsin 231)

Judicial interpretations on the constitutionality of school exclusion in recent years have shed considerable light upon the right to an education. I am informed that there are now 46 pending and completed Right to Education suits in 27 states. These cases issue from an infringement of the concommitants of citizenship as defined in the 14th Amendment to the United States Constitution. A state may not merely undertake to educate some of its children; it must educate all children. This is reasonable and just because all children learn. The handicapped child is entitled to the educational opportunity to reach his fullest potential and this maxim applies to the multihandicapped, bedfast resident on the back ward of a state institution.

Time does not permit me to fully discuss the propensity for discrimination in the identification of the pseudo-handicapped child. We all know that many special education classes are abundant reservoirs of minority children who have been improperly labeled "handicapped". We must learn to mellow our haste for so-called prescriptive intervention because a child brings a different cultural bearing to school with him. Again, we find court action in this area stemming from the 14th Amendment right to due process of law.

Momentum--This word best describes the emerging recognition of civil rights for handicapped Americans. In the coming decade, these rights will become fully articulated within the provinces of our judicial system, in our state and federal legislative bodies, and throughout our federal system. Handicapped Americans, in other words, will achieve citizenship.

Setting National Priorities--And Frustrations

But, how can we translate this goal of "citizenship" into practice? Pass a law? Issue more court decisions? Convince community leaders it is a wise and just course of action? Many lives indeed are affected by our choices. Although Americans are materially the most abundantly rewarded people on earth, our resources are limited. Our Gross National Product surpasses the incredible sum of one trillion dollars. That is twelve zeros, by the way. Yet poverty exists amidst plenty; many handicapped children go unserved or poorly served; community attitudes toward the poor and the handicapped are

often prohibitively rigid. Congress, state legislatures and city councils may adopt new and exciting legislation, but legislation is not a panacea. To be sure, many problems can be solved with new legislation. Too often, however, new legislation is a source of frustration and disappointment because it merely publicizes a need without creating either the means or the resources for meeting it. De Toqueville reminds us that "Patiently suffered evils become unendurable when the expectation of escaping them crosses men's minds. Abuses removed call increasing attention to the now more galling ones that remain."

"The Goal is in Sight"?—let us not forget De Toqueville's "in-sight" into the American character.

Goals for the Seventies

I recently spoke at the annual convention of another association of individuals concerned with the well-being of the handicapped. During my talk I offered eight program objectives for the handicapped services field during the 1970's. I believe these goals are sub-objectives to be achieved as we pursue the goal--that of citizenship objective for all Americans with handicaps. Let me share these objectives with you:

First----- The enactment and implementation of comprehensive, inexpensive health care for all Americans;

Second----- The availability of quality child development services from birth for all infants and "children at risk" of handicapping conditions.

Third----- Continued progress in reducing poverty in America: We know that poverty and handicap are comfortable bedfellows. We shall see far-reaching changes in welfare reform;

Fourth----- Uniform access to free, public education for severely handicapped children, many of whom are denied entry into public educational settings;

Fifth----- Substantial commitments on the part of Federal and state

governments for deinstitutionalization. These commitments--legislative, judicial, and ministerial--will be wed to reasonably adopted standards for institutional and community living systems, to manpower training, and to the findings of epidemiological research;

Sixth----- A significant reduction in the infant mortality rate. The United States presently ranks 13th among the nations of the world. Our rate is 18.5 per 1,000 live births. This must be improved if we are to prevent handicaps;

Seventh----- Increasingly intense advocacy by handicapped people themselves in dramatizing civil rights for this disenfranchised minority; and,

Eighth----- Improvements in the adoption of presently devised remediation techniques in special education, audiology, preventative medicine, and other disciplines.

Summing Up

The Easter Seal Society's role in facilitating the achievement of constitutional rights and programmatic objectives for the handicapped is a fundamental one. Your role is to advocate for the development of public responsibility for the education and treatment of citizens with handicaps. Together, we must create processes of rational decision-making which determines how best to set public priorities and allocate resources. Where public programs are absent or not fully developed, the Society must continue to provide direct services, support research and educate the public--particularly the public at the community level, where compliance is critical. The Easter Seal Society must also continue to gather and deploy human and finiancial resources beyond the boundaries of the general tax revenues and service delivery systems which restrict and define the scope of public activity.

This process of partnership both in policy formulation and in policy execution has always relied upon the contributions of the private sector. The Easter Seal Society has a long and distinguished track record in articulating problems, in providing services and as advocates for a large segment of America's vulnerable populations.

I can personally assure you that under my leadership, the Office of Human Development will work towards making the ideals I have presented today a reality. I too believe that Mañana is Today.

Let us not raise another generation of handicapped citizens; but rather, let us foster in the hearts and minds of the American people a commitment to bring citizens with handicaps into the mainstream of American life.

No longer shall this principle be allowed to remain out of sight—out of mind.